Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1978

No. 78-1253

JOSEPH L. BECKERS and
DANIEL S. MIOTKE,

Petitioners,

vs.

INTERNATIONAL SNOWMOBILE INDUSTRY
ASSOCIATION, et al.,

Respondents.

PETITIONERS' REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

JOHN E. THOMAS
Attorney for Petitioners
Fifth Floor
360 Wabasha St.
St. Paul, Minn. 55102
612/298-1950

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PETITIONERS' ARGUMENT IN REPLY

The respondents would now have this Court overlook the nature of the antitrust violation that is alleged as described in the Petition itself at page 6. Instead, the respondents detail the mechanics of the chain of distribution and apply *Illinois Brick* as a bar to all antitrust actions unless it can be escaped through footnote 16. Contrary to what the respondents contend (Resp. Br. at p. 8) the effects of their acts were not "passed through the chain of distribution to injure the consumers. The violation was *solely* targeted at the price at which the retailers sold to the consumers. It was resale price maintenance at the *retail* level. The question of the "pass-on" theory of damages is not in the case. The consumers are in the position of direct purchasers because there was only *one* overcharge and it was paid only by the consumers. "*As a matter of law*" under F.R.C.P. 56(c) summary judgment should not have been granted because *Illinois Brick* is not applicable in any way, shape or form. Reliance on footnote 16 was only an *alternative* position.

Professor Dorsey D. Ellis Jr., of the University of Iowa Law School said to this counsel in a letter dated July 28, 1978, as follows:

> "In response to your question, it does not seem to me that the *Illinois Brick* decision touched on the question of resale price maintenance."

The United States Amicus Brief in *Reiter v. Sonotone et al.* No. 78-690, awaiting argument, pointed out to this Court that:

> "Consumers are the only direct victims of retail price fixing conspiracies."
> (U.S. Amicus at p. 25, esp. fn. 18)

The U.S. Amicus Brief also said that:

> "Private treble damage actions are an essential supplement to the Division's enforcement efforts."
> (U.S. Amicus at p. 25)

There is no companion government action herein so this action assumes considerable public interest.

Dated: March 14, 1978.

Respectfully submitted,

JOHN E. THOMAS
Attorney for Petitioners
Fifth Floor
360 Wabash Street
St. Paul, MN 55102